

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:

ALESHIA R. JACKSON,

Debtor.

Case No. 08-30763

Chapter 13

APPEARANCES:

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CHAPTER 13 TRUSTEE
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(Standing Chapter 13 Trustee)
LYNN HARPER WILSON, ESQ.
(Staff Attorney to Chapter 13 Trustee)

MARGARET CANGILOS-RUIZ, U.S. BANKRUPTCY JUDGE

MEMORANDUM-DECISION AND ORDER

The chapter 13 trustee (“Trustee”) objects to confirmation of the plan proposed by Aleshia R. Jackson (“Debtor”) under section 1325 of the United States Bankruptcy Code, 11 U.S.C. §§ 101–1532 (2008), (“Code”). At issue is whether Debtor should provide for an increase in the amount of her plan payment after her mortgage debt is satisfied during the term of the plan. This memorandum-decision incorporates the court’s findings of fact and conclusions of law as permitted by Fed. R. Bankr. P. 7052 as made applicable by Fed. R. Bankr. P. 9014(c).

JURISDICTIONAL STATEMENT

The Court has core jurisdiction of this matter pursuant to 28 U.S.C. §§ 1334, 157(a), (b)(1) and (b)(2)(L).

FACTUAL BACKGROUND

Debtor's Form 22C reflects \$401.05 of "monthly disposable income." As part of the calculation of "monthly disposable income," Debtor lists the following on Line 47 of Form 22C as "Future payments on secured claims": \$567.00 to Midland Mortgage Company and \$7.45 to New York State Tax Commission. Debtor adds the mortgage payment and New York State Tax Commission payment and deducts the total amount of \$574.45 from the "IRS Housing and Utilities Standards; mortgage/rental expense" of \$878.00. Debtor then lists the resulting amount of \$303.55 on Line 25B of Form 22C, "Local Standards: housing and utilities; mortgage/rent expense."¹

Debtor lists her husband's social security income, \$1,128.00, on Line 11 of Schedule I, "Social Security or other government assistance." Debtor did not include her husband's social security income on Form 22C.² Debtor lists \$567.00 on Line 1 of Schedule J, "Rent or home mortgage payment." Line 1 of Schedule J also indicates that real estate taxes and property insurance are included in the mortgage payment. Debtor's Schedule J reflects \$1,548.08 of "monthly net income."

Debtor's plan, filed on March 31, 2008, indicates that Debtor will pay the mortgage payment directly to the creditor and not as part of Debtor's plan. Debtor proposes monthly plan payments of \$420.00 with a dividend of not less than 21.81% to unsecured creditors. Debtor's proposed payment is roughly the result of taking the amount of her "Average monthly income" from Schedule I and subtracting the amount of her husband's social security income and her "Average monthly expenses" from Schedule J, resulting in an amount of \$420.08. Both Debtor

¹ Applicable IRS standards are available at www.usdoj.gov/ust/. See 11 U.S.C. § 707(b)(2)(A)(ii)(I).

² Both parties agree that the social security income of the Debtor's husband was properly excluded from the calculation of monthly disposable income on Form 22C, as provided for by the Code. 11 U.S.C. § 101(10A)(B). Debtor appropriately includes the social security income on Schedule I.

and Trustee agree that Debtor is an “above the median” debtor, requiring a plan commitment period of 60 months.³

Trustee objects to confirmation of the proposed plan on the grounds that Debtor is not committing all of her “projected disposable income” during the applicable commitment period. Trustee specifically objects to Debtor not providing for an increase in the plan payment amount after the mortgage debt is satisfied.

ISSUE PRESENTED

The question presented is purely an issue of law: Can the court find that a debtor is committing all of her projected disposable income to make payments to unsecured creditors if, after a secured mortgage debt is paid off during the plan, plan payments will not then be proportionally increased for the remainder of the applicable commitment period? The court answers this question in the affirmative as explained below.

DISCUSSION

In order for a debtor to confirm a plan over an objection by the trustee or the holder of an allowed unsecured claim, the debtor must either pay unsecured claims in full or show that “all of the debtor’s projected disposable income to be received in the applicable commitment period...will be applied to make payments to unsecured creditors under the plan.” 11 U.S.C. § 1325(b)(1)(B). Determining the amount of a debtor’s disposable income begins with “current monthly income received by the debtor” and continues by subtracting “amounts reasonably necessary to be expended....” 11 U.S.C. § 1325(b)(2). These “amounts reasonably necessary to be expended” are determined “in accordance with subparagraphs (A) and (B) of Code section

³Whether or not a debtor is “above the median” or “below the median” is determined by calculations made on Form 22C. For debtors whose income is below the applicable median family income (available at www.usdoj.gov/ust/), the applicable commitment period is 3 years, and for debtors whose income is above the applicable median family income, the applicable commitment period is 5 years. 11 U.S.C. § 1325(b)(4).

707(b)(2)...,” which list the appropriate expenses to be deducted from a debtor’s income when calculating disposable income. 11 U.S.C. § 1325(b)(2)-(3).

Code section 707(b)(2)(A) permits a debtor to subtract average monthly payments on secured debt and directs that a debtor’s “average monthly payments on account of secured debts shall be calculated as the sum of the total of all amounts scheduled as contractually due to secured creditors in each month of the 60 months following the date of the petition...divided by 60.” 11 U.S.C. § 707(b)(2)(A)(iii). A debtor then subtracts the resulting average monthly payment as part of the calculation of disposable income. Here, Debtor did not comply with Code section 707(b)(2)(A)(iii), which is incorporated in the directions on line 47 of Form 22C. These directions state that “the Average Monthly Payment is the total of all amounts scheduled as contractually due to each Secured Creditor in the 60 months following the filing of the bankruptcy case, divided by 60.” Instead, Debtor listed the current monthly mortgage payment amount.

Trustee cites to the holding of *In re Koch*, that a debtor is not entitled to claim a vehicle expense on Form 22C for collateral being surrendered as part of a chapter 13 plan, to support Trustee’s argument that Debtor should increase plan payments after the mortgage debt is satisfied. *In re Koch*, No. 08-30410, 2008 Bankr. LEXIS 2113 (Bankr. N.D.N.Y. July 25, 2008). Trustee asserts that since Debtor’s mortgage payments will no longer be contractually due after the mortgage debt is satisfied, Debtor should thereby increase her plan payments after the mortgage debt is satisfied.

In order to clarify this issue, it is necessary to examine how the Local Standards deductions for housing and transportation (Form 22C, Lines 25B, 28 and 29) and Payments on Secured Claims deductions (Form 22C, Lines 47-48) operate. Line 25B of Form 22C includes a

table to calculate the appropriate amount to be entered. First, a debtor inserts the appropriate IRS Housing and Utilities Standard. Next, “Average Monthly Payments” to pay a debtor’s mortgage as listed on Line 47 of Form 22C are subtracted, and the resulting “Net mortgage/rental expense” is listed on Line 25B. The same calculation is made relative to a debtor’s vehicles on Lines 28 and 29 regarding the transportation ownership/lease expense.⁴ As long as the Average Monthly Payments listed on Lines 47 and 48 of Form 22C are below the applicable Local Standards, there will be no net change in monthly disposable income as calculated on Form 22C and listed on Line 59. In *Koch*, the debtor included payments on debts secured by vehicles which were to be surrendered as part of his chapter 13 plan. The payments listed on Line 47 of Form 22C exceeded the deduction on Line 28. Consequently, the payments on the debts secured by the vehicles to be surrendered were effectively reducing the calculated monthly disposable income. The fact that the debtor in *Koch* was surrendering three of his four vehicles did not prevent him from deducting the applicable figure from the IRS Local Standards for transportation associated with the vehicle he was retaining.

Here, Debtor’s mortgage payments are scheduled as contractually due and will remain so during the plan term until the mortgage debt is satisfied. As noted above, Debtor did not properly list the Average Monthly Payment on Line 47, but the error does not affect monthly disposable income listed on Line 59, as both the monthly payment and the Average Monthly Payment are less than the housing and utilities standard listed on Line 25B.⁵

Trustee argues that the directive in Code section 1325 that “amounts reasonably necessary to be expended...shall be determined *in accordance with*...section 707(b)(2)” does not necessarily require that the expenses be the amount set forth in the IRS standards. 11 U.S.C. §

⁴ The expense calculation on Line 28 is for a debtor’s first vehicle; Line 29 is for a debtor’s second vehicle, if any.

⁵ Trustee agrees in his Reply (Doc. No. 20) that no change would result to Line 59 of Form 22C if the correct Average Monthly Payment were used.

1325(b)(3). The court declines to accept Trustee's interpretation. As the court in *In re Osei*, explained, "when considering the interplay of §§ 1325(b)(3) and 707(b)(2)(A) and (B), Congress unambiguously directed that any expenses qualifying as 'applicable monthly expense amounts' under the Local Standards would be deemed 'reasonably necessary' expenses under § 1325(b)(2)." *In re Osei*, 389 B.R. 339, 351 (Bankr. S.D.N.Y. 2008). The language of Code § 707(b)(2)(A)(ii)(I) is clear and mandatory: "debtor's monthly expenses *shall be* the debtor's applicable monthly expense amounts specified under the ... Local Standards" *Id.* (*emphasis added*). As this court has previously held regarding the Local Standards for transportation, debtors may properly utilize the full expense amount specified under the Local Standards issued by the IRS for purposes of calculating their disposable income on Form 22C. *In re Schneider*, No. 07-32487, 2008 Bankr. LEXIS 1369, at *8 (Bankr. N.D.N.Y. Apr. 28, 2008). This court finds that the same principle applies regarding the Local Standards for housing and utilities. *See also In re Osei*, 389 B.R. 339 (Bankr. S.D.N.Y. 2008).

Trustee asserts that to calculate plan payments, Debtor's monthly disposable income from Line 59 of \$401.05 should be multiplied by 60, the number of months in the applicable commitment period, resulting in \$24,063.00. This amount is what Debtor's plan must pay to unsecured creditors. Trustee argues that Trustee commissions estimated at \$1,638.00, unpaid Debtor counsel's fees of \$2,424.00 and a secured claim of the New York State Tax Commission of \$447.00 are not included in the amounts to be paid to unsecured creditors, so the plan must provide for a total of \$28,572.00 in payments. According to Trustee's calculations, since Debtor's proposed plan provides for \$25,200.00 in plan payments (\$420.00 per month for 60 months), the plan falls short of the required payments to unsecured creditors by \$3,372.00 and plan payments should be increased to \$485.00 per month for the remaining 56 months of the

plan.⁶ The court's analysis differs. Administrative expense claims of debtor's counsel and trustee commissions are priority unsecured claims. 11 U.S.C. § 507(a). Code section 1325(b) requires that projected disposable income be paid to all unsecured creditors, not just general unsecured creditors.⁷ 11 U.S.C. § 1325(b)(1)(B). Since Trustee's commissions and the fees of Debtor's counsel are included in the amount paid to unsecured creditors, Debtor's proposed plan payments totaling \$25,200.00 do not fall short of the required payments to unsecured creditors. The proposed plan payments are also sufficient to cover the secured claim of the New York State Tax Commission, and the plan payments do not need to be increased.

Notwithstanding that Debtor did not correctly complete Form 22C, Debtor's error did not affect the calculation of monthly disposable income, which would not change if Debtor amended the form. Accordingly, the court finds that all of Debtor's projected disposable income will be applied to make payments to unsecured creditors under the plan and Trustee's objection is overruled. Trustee is directed to submit a standard order of confirmation in accordance with this decision.

So ordered.

Dated: August 19, 2008
Syracuse, New York

Hon. Margaret Cangilos-Ruiz
U.S. Bankruptcy Judge

⁶ Increased plan payments would begin with the August 2008 payment.

⁷ The 2005 Committee Note to Official Form 22C states, "Section 1325(b)(1)(B) requires that disposable income contributed to a Chapter 13 plan be used to pay 'unsecured creditors.' A debtor's attorney who has not taken a security interest in the debtor's property is an unsecured creditor who may be paid from disposable income."